

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE LITHIUM ION BATTERIES
ANTITRUST LITIGATION

Case No. 13-MD-02420 YGR (DMR)

MDL No. 2420

This Documents Relates to:
ALL INDIRECT PURCHASER ACTIONS

**ORDER TO SHOW CAUSE RE: FURTHER
NOTICE AND CLARIFICATION OF
ALLOCATION AND DISTRIBUTION PLAN**

TO INDIRECT PURCHASER PLAINTIFFS AND THEIR APPOINTED INTERIM CLASS COUNSEL:

YOU ARE ORDERED TO SHOW CAUSE why this Court should not require further notice to the class clarifying that all settlements between IPPs and *all* defendants are subject to the same plan of allocation and distribution consistent with the allocation and distribution plan this Court approved in connection with the motion for final approval of IPPs' settlements with the Panasonic, Samsung, Sanyo, and Toshiba defendants ("the Round 3 Settlements").

In its August 16, 2019 Order Granting Indirect Purchaser Plaintiffs' Motion for Final Approval of Settlements with SDI, Tokin, Toshiba, and Panasonic Defendants ("Round 3 Settlements"), the Court approved a plan for allocation and distribution of the settlement funds as follows:

First, 90 percent of the settlement funds will be allocated toward Class Members who are residents from so-called *Illinois Brick* repealer states, and the remaining 10 percent will be allocated toward Class Members who are residents of non-repealer states. Second, within each allocation, the funds will be distributed *pro rata* to claimants based on the total number of covered products purchased from January 1, 2000, through May 31, 2011.

(Dkt. No. 2516, "August 16, 2019 Order", at 4:7-13.)

1 Presently pending before the Court, as part of post-remand consideration of IPPs' motion
2 for approval of the settlement agreements with defendants LG Chem, Hitachi, and NEC ("the
3 Round 2 Settlements"), IPPs request approval of a "revised" distribution plan consistent with the
4 allocation and *pro rata* distribution plan approved in the Court's August 16, 2019 Order.

5 The Court has undertaken a comprehensive review of the motions, approval orders, and
6 class notices for each of the three rounds of settlements, including IPPs' settlement with the Sony
7 defendants, as well as the discussions on the record regarding the timing of distribution plan
8 decisions. The settlement agreements with each and every defendant included identical language
9 concerning the Court's continuing discretion and jurisdiction to approve any plan of distribution.
10 Class notices distributed in connection with approval of the Sony settlement and the original
11 approval of the Round 2 Settlements indicated that payments or distributions would be "based on a
12 number of factors, including the number of valid claims filed by all Class Members and the dollar
13 value of each Class Member's purchases." (*See* Dkt. Nos. 1504-2; 1714 [Exh. 1].) Indeed, in the
14 hearing on the motion for final approval of the Round 2 settlements on October 3, 2017, the Court
15 specifically noted on the record that objectors' concerns about the distribution plan were not ripe,
16 given that the Court had not yet considered or approved a distribution plan. (Dkt. No. 1984 at
17 4:16-20, 22-23; *see also id.* at 5:6-12 [IPPs' counsel concurring].) The Court's October 27, 2017
18 Order granting final approval of the Round 2 Settlement Agreements stated that "a *pro rata* plan of
19 distribution, *the specifics of which the Court shall approve at a later date*" was approved and
20 ordered IPPs to *submit a proposed distribution plan* at the close of the claims period. (Dkt. No.
21 2003 at 1, 3, 5, emphasis supplied.)

22 Thereafter, on November 30, 2018, IPPs notified the Court that they had reached
23 settlements with all remaining defendants and "ha[d]retained the Honorable Rebecca Westerfield
24 (ret.) to recommend a plan of allocation to the Court." (Dkt. No. 2447.) In their motion for
25 preliminary approval of the Round 3 Settlements, IPPs noted that a plan of distribution was left to
26 the determination of the Court and advocated for a 90/10 allocation of the settlement funds as
27 between repealer and non-repealer state class members. (Dkt. No. 2459 at 4, 17-18.) However, the
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1 class notices distributed with the Round 3 settlements approval process stated that the LG Chem,
2 Hitachi Maxell, NEC, and Sony Settlements “. . . *do not differentiate between people who live in*
3 *different states*. Everyone who submits a valid claim will receive the same amount per device.”
4 (See Dkt. No. 2459-2 at ECF pg. 54.)

5 This statement in the Class Notice distributed with Round 3 was inconsistent with the law
6 of the case. Prior to the Round 3 Settlements, the Court had not considered or determined a
7 distribution plan for any of the settlements. The most logical reading of the motion for approval of
8 the final Round 3 settlements would have been to present a distribution plan for the entire
9 settlement fund to the Court.

10 The error of the Round 3 class notice was compounded after the Ninth Circuit vacated
11 approval of the Round 2 Settlements and remanded to this Court for further proceedings.
12 Consistent with the plan approved in the August 16, 2019 Order, the new notice IPPs provided to
13 the class described a “*revised*” distribution plan applicable to the Round 2 settlements, explaining
14 the allocation of the Net Settlement Fund into the 90/10 division as between repealer and non-
15 repealer state residents, and then a distribution *pro rata* to claimants based on the total number of
16 covered products. (Dkt. No. 2581-1.) However, this new notice repeated the erroneous assertion
17 that the Court had decided a distribution plan for the Sony settlement which would provide “the
18 same amount per device” for all class members with valid claims, regardless of their state of
19 residence. (*Id.* at ECF pg.5.) In fact, the Court had not decided that the Sony settlement would be
20 subject to a different distribution plan from the other settlements or, as IPPs would have it, *any*
21 specific plan of distribution for the Sony settlement whatsoever.

22 The Court is inclined to order a new notice to the class clarifying that *all* of the IPP
23 settlements are subject to the same plan of 90/10 allocation based upon residence of the class
24 member in repealer versus non-repeater states and, from those allocations, a *pro rata* distribution to
25 valid claimants based on the total number of covered products purchased from January 1, 2000,
26 through May 31, 2011. This approach should have been done as part of the Round 3 Settlements
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1 and addresses the early concerns of the Court regarding the appropriate distribution plan for early
2 settlements in these complicated, multi-defendant cases which span over many years.

3 IPPs shall file a response to this Order to Show Cause no later than **August 24, 2020**,
4 including any proposal for how to provide notice of any clarification in the most expeditious
5 manner, consistent with due process and fairness. Should the Court require oral argument, it will
6 provide further notice of the date and time of any hearing.

7 **IT IS SO ORDERED.**

8 Dated: August 14, 2020


YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT JUDGE